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May 11, 1983

David Hird, Esq.  
Room 1535  
Environmental Enforcement Section  
Land & Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Re: U.S.A. v. Reilly Tar & Chemical Corp.

Dear David:

I have your letter of May 10, 1983.

I am extremely disappointed and concerned that you have chosen to allege, in a letter circulated to several federal, state and local officials, that Reilly has somehow deviated from a promise to submit a "settlement proposal."

A careful review of all the correspondence which has been exchanged between your office and mine, beginning with Erica Dolgin's letter of July 22, 1982, will reveal that Reilly and ERT have not been working on a settlement proposal. Specifically, my response to Ms. Dolgin's letter (copy enclosed) said, in part:

"If, however, the United States Environmental Protection Agency is offering Reilly the opportunity to propose a comprehensive solution to the perceived public health and environmental problems at its former site in St. Louis Park, then Reilly herewith accepts that offer.

That letter led to a meeting held August 24, 1982 in the United States Courthouse. You were not in attendance, but Ms. Dolgin was. Steve Shakman, the PCA's lawyer wrote to me on September 15, 1982 and said:

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"The meeting on August 24 made significant progress toward a mutual understanding of the respective priorities of the parties. We now need your advice as to Reilly Tar's participation in the water treatment work and plans for proposing a comprehensive solution."

I said: In my letter to Erica Dolgin dated September 17, 1982,

"Reilly has asked ERT to prepare a written report describing a proposed comprehensive remedy for the St. Louis Park groundwater contamination. Reilly will be continuing its discussions with ERT in order to advise you of a specific timetable for receipt of this report."

In my letter of September 30, 1982 to Steve Shakman I indicated that we proposed to submit the ERT report by December 31, 1982. Then, in my letter of February 28, 1983, I apologized for delays in the issuance of the ERT report, said that I expected it in 45 days, but nowhere described it as a "settlement offer."

At the pretrial conference before the Magistrate on March 29, 1983, he asked whether he should assume that there was no possibility of settlement in this case. I replied that he should not make that assumption, that Reilly's consultant was preparing a comprehensive solution report which should be released in April and that this report might lead to settlement discussions between the parties. These comments are on tape and the tape may be checked, if necessary.

It is still my sincere hope and that of Reilly that the report will lead to settlement discussions and it is certainly our intention that they be conducted in an "atmosphere of discretion and confidentiality, as is appropriate for such matters." I will not try to predict the outcome of those discussions, nor should you.

It is unfortunate if you have misread or misinterpreted all that. It is even more unfortunate, in view of the fact that environmental litigation so often becomes so emotional, and of

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the further fact that this particular matter seems to have been so politicized for the past nine years, that you have now taken pains to make the claim that Reilly has breached some promise, or that Reilly is not acting openly or in good faith. As the foregoing correspondence indicates, there is simply no basis for that claim.

Your letter also states that Reilly apparently intends that the federal government respond in public to the ERT proposal before it has adequate time to consider that proposal. If you will carefully read my letter of May 3, 1983 to Steve Shakman you will see that it says:

"I expect that it will take many days or weeks after May 20 for the report to be read and thoughtfully considered. Therefore, Reilly will also make ERT representatives available for subsequent meetings as long as those meetings appear to be reasonably productive."

We have never contemplated that the federal, state or local governments would respond to the ERT proposal at the May 18 or 19 meetings or at the technical briefings offered on May 20. Indeed, since they will not have had access to the report prior to the meetings, they can honestly state they have not had a chance to study it. The question is not "will you respond?" The question is "will you listen?" Since the written report is over 1200 pages long, it is obvious to us that the most effective way to present it is to present it orally, then leave copies for you to study. This is our plan.

Finally, your letter several times describes Reilly's efforts at open communication as a "publicity show." It is true that we have invited the news media. We have done that because we sincerely believe that the news media and the public have an interest in, and right to, the results of the ERT work. Since the state holds routine public meetings on its work, it would be inappropriate, even awkward, to keep the ERT work a secret. For nine years the news media, and the public, have been receiving solely the PCA version of the St. Louis Park problem. We believe that the ERT comprehensive solution to the problem is an important event and that both the media and the public, should receive it.

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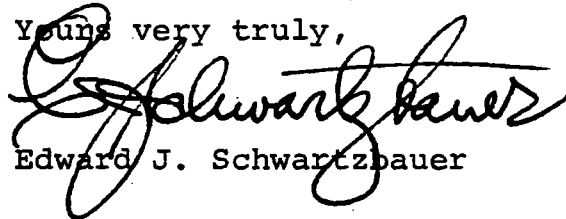
David Hird, Esq.  
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I have repeatedly offered the state officials and the city officials, an opportunity for "courtesy" briefings concerning the report prior to May 18. At this point, the Cities of St. Louis Park and Hopkins have accepted all of our invitations. Only the state and the federal government have consistently refused to meet with us. While the state representatives have agreed to attend the public meeting on May 19, your letter indicates that the federal representatives will not attend either. Thus, only the federal government has now taken the position that it will not attend either meeting.

I am enclosing a copy of today's letter to Steve Shakman. I ask both of you, once again, to reconsider your positions. We would like to meet with you.

Yours very truly,



Edward J. Schwartzbauer

EJS:ml  
Enclosure

cc: All Counsel of Record  
Ms. Sandra Gardebring  
Mr. Frank Altman  
Mr. Terry Montgomery  
Sister Madonna Ashton  
Mr. Marc Hult

Mr. Paul Bitter  
Mr. David Giese  
Mr. Michael Hansel  
Dr. Joseph Cotruvo  
Mr. Val Adamkus

July 28, 1982

Erica L. Dolgin  
Room 1507  
Environmental Enforcement Section  
Land and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Re: U.S.A. v. Reilly Tar & Chemical Corporation

Dear Ms. Dolgin:

Thank you for your letter of July 22, 1982 inviting Reilly Tar & Chemical Corporation ("Reilly") to undertake certain response actions at the former Reilly site in St. Louis Park, Minnesota. Reilly has, for a considerable period of time, been expressing its willingness to discuss with all parties to the existing litigation appropriate measures to eliminate the perceived public health problems in St. Louis Park. It has also either employed or stated its willingness to employ qualified consultants to recommend appropriate and cost-effective measures.

One of our principal problems with the February 25, 1981 letter from Mr. Berg requesting that Reilly prepare a remedial action plan was that it sought to anticipate the results of the studies that were requested and set forth certain "minimum" requirements to be included in any remedial action plan. Reilly is perfectly willing to participate in arranging for and financing the design of specific remedial measures if reliable studies demonstrate the need for such measures and if the conclusion of the study is not assumed in advance.

One example of Reilly's willingness to propose solutions was a meeting arranged by Reilly in October of 1980 attended by the then United States Attorney, Thomas K. Berg, and representatives of the E.P.A., Minnesota P.C.A., Minnesota Department of Health and the City of St. Louis Park. At that

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meeting, Dr. Francis McMichael and Mr. John Craun of Environmental Research & Technology, Inc. ("ERT") made a presentation which emphasized the fact that water treatment alternatives are available which would assure that the St. Louis Park water is potable and which would permit the early re-opening of all St. Louis Park wells, without resort to complex and expensive measures such as gradient control wells or extensive excavation. Subsequent discussions with Mr. Berg continued into 1981, but no agreement was reached.

I specifically call to your attention the provisions of the National Contingency Plan ("NCP") published in the Federal Register July 16, 1982. In describing the conditions which may give rise to "Planned Removal" under an agreement with a State or to "Remedial Action" by a State or the lead agency the plan lists: "Contaminated drinking water at the tap." See §§ 300.67 and 300.68. Quite obviously, this contemplates that there may well be a difference between the quality of the raw water, whether surface or ground, and the finished water at the tap, after necessary treatment.

One of the points stressed at the October 1980 meeting, in subsequent discussions, and in all subsequent communications was that conventional and non-conventional but proven technology exists which will remove PAH's from drinking water supplies. In spite of that fact, it appears that the governmental agencies responsible for the prosecution of this case have focused their attention on the quality of the raw ground water instead of on the actual and potential quality of the drinking water at the tap, as required by the NCP. As a result, no evidence that we have seen even remotely supports the conclusion that the St. Louis Park tap water is contaminated.

Although you may already have copies, I am enclosing for your review a report prepared by E.R.T. in September, 1981 setting forth a suggested scenario for the elimination of the St. Louis Park water problem, including measurement of the effect of existing treatment and a study of PAH treatment options. I am also enclosing a copy of a letter and a report both dated May 4, 1982, commenting on the November, 1981 Hickok report. Both of these studies make it clear that the simplest and most direct approach to a final solution of the St. Louis Park drinking water problem is to design a treatment system which will meet reasonable water quality criteria. The May 4 letter and report also point out that the existence of at least one pocket of highly contaminated groundwater located in the

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swamp south of Highway 7, deserves more immediate attention than was recommended by Hickok. Although our transmittal of the May 4 letter to the various governmental agencies involved evoked no response whatever, Reilly has, of its own volition, already requested E.R.T. to prepare a report concerning a recommended methodology to treat the contaminated swamp water.

Reilly will not be held legally responsible for expenditures of funds which are not reasonably necessary to correct the public health and environmental problems which may exist at the site. If, however, the United States Environmental Protection Agency is offering Reilly the opportunity to propose a comprehensive solution to the perceived public health and environmental problems at its former site in St. Louis Park, then Reilly herewith accepts that offer. Should you desire to discuss any aspect of this letter in person, we would be happy to meet with you at your office or any other location convenient to you.

Yours very truly,

Edward J. Schwartzbauer

EJS:ml  
Enclosure

cc: Paul Bitter  
Robert Leininger  
Stephen Shakman  
Allen Hinderaker  
Francis X. Hermann

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May 11, 1983

Stephen Shakman, Esq.  
Minnesota Pollution Control Agency  
1935 West County Road B2  
Roseville, Minnesota 55113

Re: U.S.A. v. Reilly Tar & Chemical Corp.

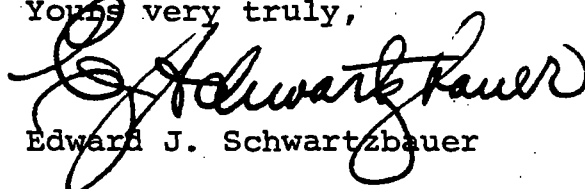
Dear Steve:

I have your letter of May 5 indicating that the PCA Director and her staff and the Commissioner of Health and her staff are unwilling to attend a meeting with Reilly consultants to discuss the comprehensive recommendations that have been in preparation for eight months.

We are sincerely sorry to hear of that decision. We are, of course, going forward with the meetings scheduled for May 18 and May 19. We believe that they will provide important new information concerning methods for solving the PAH contamination problem in the St. Louis Park area. Accordingly, it seems unfortunate that the two state agencies primarily responsible for environmental health matters have chosen not to attend.

I would like to repeat the invitation contained in my May 3, 1983 letter which was extended to federal, state and local technical and legal staffs. Five members of the ERT team will be in Minneapolis next week for the purpose of meeting with those staffs to explain and answer questions concerning the ERT report. The times and dates of their availability were indicated in my letter. I hope that you and the spokesmen for the other plaintiffs will call me in order to schedule a meeting.

Yours very truly,



Edward J. Schwartzbauer

EJS:ml

cc: All Counsel of Record  
Ms. Sandra Gardebring  
Mr. Frank Altman  
Mr. Terry Montgomery  
Sister Madonna Ashton  
Mr. Marc Hult

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